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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

FEB 20 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
2000 Biennial Review --)	CC Docket No. 00-257
Review of Policies and Rules Concerning)	
Unauthorized changes of Consumers)	
Long Distance Carriers)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	
Telecommunications Act of 1996)	
)	CC Docket No. 94-129
Policies and Rules Concerning)	
Unauthorized Changes of Consumers)	
Long Distance Carriers)	

**COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (ITTA), through its attorneys, hereby submits its comments in response to the Commission's recent Third Further Notice of Proposed Rulemaking (Third Further Notice) in this proceeding.¹

I. INTRODUCTION

ITTA is a an organization of midsize incumbent local exchange carriers (LECs) each serving less than two percent of the nation's access lines. ITTA members collectively serve over nine million access lines in over 40 states and offer a diversified range of services to their customers. ITTA's smallest member company serves under 100,000 access lines, while its largest serves just over two million. In recent years, many ITTA members have purchased local exchange assets, often in rural markets, from larger carriers. Because the customers' local exchange,

¹ 2000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 00-257, Third Further Notice of Proposed Rulemaking, FCC 00-451 (rel. Jan. 18, 2001) (*Third Further Notice*).

intraLATA toll, and/or interexchange carrier often changes as a result of these transactions, the Commission's current regulations require purchasing carriers to file a petition requesting a waiver of the carrier change authorization and verification rules in connection with each transaction. ITTA members purchasing local exchanges often invest heavily to upgrade facilities and launch new services in these areas – investments and services that can be unnecessarily delayed under the Commission's current section 258 waiver procedures.

ITTA applauds the Commission for proposing to modify the authorization and verification requirements of the carrier change rules as part of the biennial regulatory review.² ITTA wholeheartedly supports the Commission's proposal to reduce the regulatory burdens applicable to situations where a telecommunications carrier sells or transfers its subscriber base to another carrier. The Commission's slamming rules were never intended to apply in such a situation and the Commission should take this opportunity to eliminate this unintended effect of its rules. Currently, the required waiver petitions consume tremendous resources for the Commission as well as the parties to the business transaction. The cumbersome process of filing the waivers slows the transition between carriers. By streamlining the rules, the Commission can speed the delivery of new services to affected customers, while continuing to promote the consumer protection goals of the section 258.

II. THE COMMISSION SHOULD CODIFY PROCEDURES TO NOTIFY SUBSCRIBERS OF CARRIER CHANGES TO EFFECT SALES AND TRANSFERS

ITTA urges the Commission to amend the rules applicable to carriers changing a consumer's preferred carrier.³ Eliminating the need for authorization and verification of a carrier

² 47 U.S.C. § 161.

³ 47 C.F.R. § 64.1120.

change to effect any sale or transfer of a subscriber base would ease the burdens on parties by obviating the lengthy waiver process.

ITTA fully supports the Commission's proposed requirement for a written notice explaining: 1) that the acquiring carrier will be the new provider of telecommunications service for the subscriber; 2) the rates, terms, and conditions of the services offered by the new carrier; 3) that no carrier change charges will be imposed as a result of the transaction; and 4) that the subscriber has the right to select a different preferred carrier.⁴ By including these limited items in the written notice, the Commission can achieve its consumer protection goals while keeping the regulatory burden low. Consumers are more likely to read and understand a clear and concise description of the carrier change. Furthermore, acquiring carriers routinely provide this type of information to affected subscribers to introduce themselves to their new customers. In addition, the preparation and distribution of these notices has become a routine condition on the Commission's approval of section 258 waiver petitions. Therefore, supplying this information will not pose any additional burden.

Additionally, ITTA supports the proposed 30-day notice period. A 30-day notice period is reasonable given the nature of most purchase and sale transactions. In some instances, however, business exigencies may require a transaction to close in less than 30 days. In these instances, the Commission should allow the acquiring carrier to provide as much notice as is practicable under the circumstances.

⁴ Third Further Notice at ¶ 6.

III. THE COMMISSION SHOULD NOT IMPOSE ADDITIONAL REGULATORY REQUIREMENTS ON MIDSIZE CARRIERS.

A. ITTA supports the Commission's proposal to differentiate regulatory burdens based on the size of the carrier.

In addition to the above mentioned notice requirements, the Commission requests comment on a number of additional regulatory requirements. ITTA urges the Commission not to impose additional regulatory requirements on midsize and smaller carriers. The mandate of the 1996 Act, the Commission's own precedent, and the Independent Telecommunications Consumer Enhancement Act of 1996⁵ is clear: not only do the burdens of regulation often outweigh the benefits when applied to midsize carriers, but the midsize carriers are also uniquely positioned to provide new and competitive services to traditionally underserved areas.⁶

B. ITTA opposes the proposed second notice requirement.

ITTA urges the Commission not to require midsize carriers to send a second notice after the transaction closes. Preparation and distribution of an individual notice to each affected customer is a time consuming and costly process. While ITTA agrees that customers may derive significant value from the information contained in one such notice, a second notice would be entirely duplicative and would not better protect consumers. Subscribers who receive and read the first notice will not gain anything more from a second notice and may well be confused by it, while those who ignore the first notice are not likely to benefit from a second one. The Commission's rules should first and foremost ensure that consumers receive clear notice of the transaction and its effects, and not on the number of notices a carrier sends. After the transaction closes, the Commission's Truth-in-Billing rules require carriers to provide consumers

⁵ H.R. 3850, 106th Cong., 2d Sess (passed House of Representatives Oct. 3, 2000) (reintroduced in 107th Congress as H.R. 496, 107th Cong., 1st Sess).

⁶ *Id.* at § 2(a)(4)-(6).

with clear notification of change in their service provider on their bill.⁷ In addition to requiring new carriers to highlight this information, the Truth-in-Billing rules require common carriers to provide a toll-free number for customers to call with any questions. Therefore, the customer's first bill from the new carrier already will provide a supplemental alert to the carrier change.

C. ITTA opposes a requirement that would compel a purchasing carrier to maintain the same rates as the seller.

The Commission suggests imposing a requirement on purchasing carriers to maintain the same rates as the seller. Such action would run counter to the deregulatory goals of Section 11 and the 1996 Act, and would reverse a twenty-year pattern of decreased rate regulation.⁸

Such regulation is also unnecessary, both with respect to long distance and local exchange rates. The Commission has already found that the long distance industry is

⁷ *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72 (rel. May 11, 1999), Order on Reconsideration, FCC 00-111 (rel. Mar. 29, 2000).

⁸ Beginning in 1979, the Commission eased regulations on long distance rates. *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983), *vacated AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied, MCI Telecommunications Corp. v. AT&T*, 113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985), *vacated MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (collectively referred to as the *Competitive Carrier proceeding*).

Subsequently, the Commission instituted price cap regulation for Regional Bell Operating Companies and GTE in 1991, *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6818-20 (*LEC Price Cap Order*). The Commission also permitted price cap LECs substantial pricing flexibility. *Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, FCC 99-206 (rel. Aug. 27, 1999). Recently, the Commission has begun to examine reduced rate regulation for other carriers. *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Notice of Proposed Rulemaking, FCC 00-448 (rel. Jan. 5, 2001).

competitive,⁹ eliminating any need for a Commission rule requiring the purchaser to maintain the seller's rate structure. Not only is the purchaser required to disclose its rates, terms and conditions in accordance with Commission rules, 47 C.F.R. § 42.10, but the initial disclosure will give individually-directed notice of this information. This actual notice of the purchaser's rates, terms, and conditions of service, coupled with the availability of other service providers in the market, will lend actual market discipline to acquisition process.

Such a rule is also unnecessary with respect to consumer local exchange services. Such rate are under the jurisdiction of state public utility commissions. These state commissions actively involve themselves in the ratesetting process in connection with acquisitions of local exchanges within their state. These state commissions are best positioned to evaluate whether rates should change in connection with the acquisition, and the impact that new carrier investments in upgraded facilities should have.¹⁰

D. ITTA questions the value of a certification requirement.

All carriers are required to comply with the Commission's rules. This fundamental truth is unaffected by any requirement that a carrier certify its compliance with individual rule sections. As a result of this basic fact, a certification requirement will not increase the level of consumer protection the Commission's notification rules would provide.

Requiring all acquiring carriers to certify compliance with the Commission would substantially reduce the deregulatory benefits the Commission is seeking to capture. As mentioned in the Third Further Notice, the Commission receives numerous waiver petitions every month. A large number of these waiver petitions are filed by small and midsize carriers

⁹ *Motion of AT&T to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1995).

¹⁰ Furthermore, as written, the Commission's proposal would bar both rate reductions and increases, a result that would be passing strange.

purchasing rural customer lines and accounts from larger carriers. Requiring a certification process for the notice requirements would run counter to the Commission's deregulatory goals, with no attendant benefit to consumers, carriers, the Commission, or the public interest.

III. CONCLUSION

ITTA strongly urges the Commission (i) to eliminate the need to seek a slamming waiver in the context of a sale or transfer of a subscriber base; (ii) to implement the streamlined notice procedures discussed above; and (iii) not to impose additional regulatory requirements on midsize and smaller carriers.

Respectfully submitted,

THE INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE

A handwritten signature in black ink, appearing to read "David Zesiger", with a stylized flourish at the end.

David W. Zesiger
Executive Director
The Independent Telephone &
Telecommunications Alliance
1300 Connecticut Avenue, N.W.
Suite 600
Washington, D.C. 20036

A handwritten signature in black ink, appearing to read "Richard R. Cameron", with a stylized flourish at the end.

Karen Brinkmann
Richard R. Cameron
Elizabeth R. Park
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004-2505

Its Attorneys

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